In the United States Patent and Trademark Office

Appn. Number:	09/641,410
Appn. Filed:	August 18, 2000
Applicant:	Alice Mary O'Donnell Kiely
Title:	Edible Supports for Comestibles with Optional, Edible Mess Guards and Drip Guards
Examiner/GAU:	Chawla/Hendricks/1794

Yorktown Heights, NY February 23, 2010

Applicant's Summary of Telephone Conversation

Assistant Commissioner for Patents
Arlington, Virginia 22313

Sir:

The following is Applicant's summary of the phone call with Jyoti Chawla on January 29, 2010 with respect to the above application.

On 1/29/10 Examiner Jyoti Chawla called Applicant. Applicant received the voice mail from Examiner Chawla and called Examiner Chawla back.

When Applicant called back, Applicant got a prerecorded message made by Examiner Chawla. Applicant left a message saying that Applicant was returning her phone call.

Examiner Chawla called back and said that she had been on the other line with someone.

Background:

With regard to Application 09/641,410 Edible Supports for Comestibles, Applicant had made two responses to the Final Office Action of 7/09/2009. One on 10/09/09 (20 pages) and the other on 11/23/2009 (25 pages). As always, Applicant responded to every concern of Examiner. Applicant's two responses also pointed out that the finality of the Final Office Action was improper Examiner had improperly made the Office Action Final having failed to show any factual evidence of anticipation under 35 USC section 102, or any factual evidence of obviousness under 35 USC section 103 with regard to the reference to Musher (2,217,700) over the merits of Applicant's claims. Therefore the Office Action may not be made final.

Applicant's two responses also noted that the finality of the Office Action was improper for the further reason that Examiner specifically failed to address Applicant's argument that the unit structure of Musher did not show a solid material and therefore did not show a composite material. Examiner neither "took note of Applicants argument nor addressed the substance of it." MPEP 707.07(f) If an examiner does not respond to an applicant's argument, an applicant is unable to respond to the allegations and the Office Action therefore may not be made final.

In Applicant's two responses, Applicant further pointed out that the finality of the Office Action was improper for furthermore having introduced a new prior art reference to Lane (1,690,984) in the Final Rejection. This new reference was to find obvious a claim that had been present prior to a non-final office action. Specifically claim 350 recited on 7/30/2008 was present *before* the non-final office action of 10/16/2008 was sent. The *feature(s)* in claim 350 could have been rejected in an earlier office action but were not, i.e. was not necessitated by Applicant's amendment 706.07(a), and therefore the Office Action may not be made final. Applicant's two responses were sent in plenty of time for Examiner Chawla to reconsider the finality of the Office Action.

Applicant is concerned [emphasis added] that Examiner(s) continue to improperly make Office Actions final:
a) while failing to address the *known subject matter of Applicant's claims as a whole, i.e examiners are unlawfully dissecting the claims and rejecting the claims based upon these dissections taken out of context;
b) without responding to the merits of Applicant's arguments, i.e. examiners are unlawfully taking the words of Applicant's arguments out of context;
c) while failing to "take note of nor address the substance of..." at least Applicant's specific

argument that a composite material is a solid material, while the unit structure of Musher is filled with interstices for ice cream and does not show a solid material or a composite material;
d) without presenting any factual evidence of anticipation under 35 USC section 102, or obviousness under 35 USC section 103 for the reference to Musher, or
e) while introducing a new reference to Lane (1,690,984) while the noted claim was present prior to a non-final office action.

(*Examiners are well aware of the subject matter of Applicant's support from responses from Applicant to Examiner's restriction.)

Telephone Discussion:

Examiner Chawla told Applicant that the application was going to be abandoned.
Applicant told Examiner Chawla that application 09/641,410 had not been abandoned.
When I asked Examiner Chawla why she wasn't addressing my claims, Examiner Chawla said that she had been addressing my claims and that since my claims were "either/or" claims, all that she had to do was to disclaim one side of the "or" in the claims and that constituted her due diligence.

(Examiner has thus admitted to dissecting Applicant's claim and making the Office Action Final based on this dissected claim portion taken out of context. Examiner's had made the rejection final based on a false and unlawful misinterpretation of Applicant's claims which thus has precluded the office from considering the merits of Applicant's independent claims, as well as Applicant's patentability arguments prior to the final rejection.)

Applicant asked Examiner Chawla why the Office Action had been made final when a new reference to Lane (1,690,984) had been introduced for the first time in the Final Office Action. Applicant brought to the attention of Examiner during the conversation that claim 350 had already been present prior to a non-final office action and Examiner had the opportunity to bring up the reference to Lane earlier.

Examiner Chawla responded that it didn't matter that the noted claim had been present in an earlier Office Action but that she could introduce a new reference and make that Office Action Final because a change in the status modifier gave her the right to do so.

(Examiner could have rejected the *features of claim 350* in a prior office action but failed to do so.)

Applicant had asked why all claims were constantly being rejected under section 102 as being anticipated by Musher (2,217,700) without any evidence that anticipated the merits of Applicant's claims. Examiner Chawla said that she wasn't making a section 102 rejection, but only a section 103. When Applicant asked again, "So you are not making a section 102 rejection?" Examiner Chawla chose not to answer.

(Thus, Examiners had been making unjustified section 102 rejections against Applicant with regard to the reference to Musher for nearly 7 years.)

At approximately midpoint in the conversation, Examiner Chawla asked, what application are we discussing?

Before the end of the conversation, Examiner Chawla said to Applicant, "maybe you should get an attorney."

Very Respectfully,

Alice O. Kiely

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Certificate of Facsimile: I certify that on the date below, this document and referenced attachments, if any, will be faxed to the central fax number of 571-273-8300 to the United States Patent and Trademark Office "Commissioner for Patents" Arlington, Virginia 22313.

2010 February 23,

Alice O. Kiely